

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*Decision*

**Applicant/Owner:** Bruce DiVirgilio, 5 Whippetree Lane, Amherst, MA 01002

**Date application filed with the Town Clerk:** January 13, 2014

**Nature of request:** For a Special Permit to modify conditions of ZBA FY1999-00027 and ZBA FY2000-00031 to formalize the expansion of the existing Supplemental Apartment from 600 to 800 square feet under Section 10.33 and 5.011 of the Zoning Bylaw

**Address:** 5 Whippetree Lane (Map 16D, Parcel 244, R-N Zoning District)

**Legal notice:** Published on February 19, 2014 and February 26, 2014 in the Daily Hampshire Gazette and sent to abutters on February 18, 2014

**Board members:** Tom Ehrgood, Mark Parent, Keith Langsdale

**Staff members:** Jeff Bagg, Senior Planner, Building Commissioner, Rob Morra

**Submissions:**

- Application form filed with the Town Clerk on January 13, 2014
- Apartment sketch floor plan
- Apartment measurements
- Apartment description
- Floor Plan from 2000 Special Permit
- Parking Plan, dated January 13, 2014
- ZBA FY1999-0027, including approved plans
- ZBA FY2000-00031, including approved plans
- Site photographs (x 4)
- Lot coverage map

**Site Visit:** March 4, 2014

The Board observed the following:

- The exterior of the property, including the two egresses to the apartment.
- The interior of the unit.

**Public Hearing:** March 5, 2014

Mr. Ehrgood provided an overview, explaining that this application is in connection with the Town's Rental Permit program. The program is intended, in part, to review compliance with conditions of previous Special Permits. In this case, the applicant Bruce DiVirgilio, is seeking to formalize changes made to a previously approved Supplemental Apartment. The applicant is also requesting approval for alterations to the approved parking plan and landscaping plan. The property will remain owner occupied and other conditions of the approvals are not being modified.

The following is a summary of the facts:

- In 1999, a Special Permit was granted to allow the creation of a 525 square foot supplement apartment over a garage. The permit was granted with condition # 1 being that the apartment is built in accordance with the approved plans.
- In 2000, a Special Permit was granted to modify the 1999 approval to allow an additional garage bay to be added with the corresponding second story addition above. The modification allowed the creation of three garage doors with a full second floor above.
- Condition # 2 of that permit stated that "the second floor of the third-car garage shall be used for storage only". The floor plan associated with this permit shows an area labeled as "existing apartment" and the adjacent room labeled as "storage".
- The area restricted to "storage" was converted by the owner at an unspecified date. The applicant asserts that the interior space was converted to living space after hearing about the change in the Zoning Bylaw which increased the size limit of a Supplemental Apartment from a maximum of 600 square feet to 800 square feet. According to the applicant's measurements, the total square footage of the apartment is 782 square feet after deducting the space taken up by interior walls.

Town staff explained that it was discovered that the expanded dwelling unit actually exceeds the size allowed for a Supplemental Apartment. It was noted that Section 5.011 of the Zoning Bylaw establishes that the maximum size of an apartment is 800 square feet of "gross floor area". During initial discussions, the expanded apartment was reviewed in terms of "habitable space", and that the gross floor area of the apartment exceeds the maximum allowed.

The Board noted that the application can withdraw this application without prejudice and re-apply under a different use category, such as a Converted Dwelling. The applicant agreed.

### Zoning Board Decision

Ms. Holstein MOVED to approve the application with conditions. Mr. Parent seconded the motion.

For the reasons stated above, the Board VOTED unanimously to accept the request to withdraw the application without prejudice.

Tom Ehrgood (D)      Mark Parent (D)      Keith Langsdale (D)  
TOM EHRCOOD      MARK PARENT      KEITH LANGSDALE

FILED THIS 14th day of May, 2014 at 9:25 A.M.  
in the office of the Amherst Town Clerk Sandra J. Burger  
TWENTY-DAY APPEAL period expires, June 3, 2014  
NOTICE OF DECISION mailed this 14th day of May, 2014  
to the attached list of addresses by Ruth Taylor, for the Board.  
COPY OF NO APPEAL issued this \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2014,  
in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS  
AMHERST, MASSACHUSETTS  
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Bruce DiVirgilio

For A Special Permit to modify conditions # 3 of ZBA FY1999-00027 and ZBA  
FY2000-00031 to formalize the expansion of the existing Supplemental Apartment from  
600-800 square feet under Section 10.33 and 5.011 of the Zoning Bylaw

On the premises of 5 Whippetree Lane  
At or on Map 16D, Parcel 244, R-N Zoning District

NOTICE of hearing as follows mailed (date) February 18, 2014  
to attached list of addresses and published in the Daily Hampshire Gazette  
dated February 19, 2014 and February 26, 2014

Hearing date and place March 5, 2014 (Town Hall)

**LEGAL NOTICE**  
The Amherst Zoning Board of Appeals will meet on Wednesday, March 5, 2014, at 6:30 PM, in the First Floor Meeting Room, Town Hall, to conduct the following business:  
**PUBLIC HEARING:**  
ZBA FY2014-00016 - Bruce DiVirgilio - For a Special Permit to modify conditions of ZBA FY1999-00027 and ZBA FY2000-00031 to formalize the expansion of the existing supplemental apartment from 600 to 800 square feet under Section 10.33 and 5.011 of the Zoning Bylaw, at 5 Whippetree Lane (Map 16D, Parcel 244, R-N Zoning District)  
ZBA FY2014-00019 - Joel Greenbaum - For a Special Permit to modify condition # 3 of ZBA FY1985-50 to allow changes to the approved parking plan and formalize the expansion from 12 to 16 parking spaces, at 8 Grove Street (Map 11D, Parcel 182, R-G Zoning District)  
ZBA FY2014-00020 - Joel Greenbaum - For a Special Permit to modify condition # 12 of ZBA FY2002-00014 to allow changes to the approved parking plan and formalize the expansion from six to eight parking spaces, at 31-35 Hallock Street (Map 11C, Parcel 59, R-G Zoning District)  
Eric Beal, Chair  
Amherst Zoning Board of Appeals  
February 19, 26  
3265912

**SITTING BOARD and VOTE TAKEN:**

To accept the request to withdraw the application without out prejudice.

Tom Ehrgood - Yes                      Mark Parent - Yes                      Keith Langsdale - Yes

**DECISION:** APPROVED with conditions as stated in permit

THE COMMONWEALTH OF MASSACHUSETTS  
AMHERST

City or Town  
**NOTICE OF SPECIAL PERMIT**  
**Special Permit**  
**(General Laws Chapter 40A)**

Notice is hereby given that a Special Permit has been granted

To Bruce DiVirgilio  
Address 5 Whippetree Lane  
City or Town Amherst, MA 01002

Identify Land Affected: 5 Whippetree Lane  
(Map 16D, Parcel 244, R-N Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner  
with respect to the use of the premises on

5 Whippetree Lane Amherst  
Street City or Town  
The record of title standing in the name of  
Bruce and Mary DiVirgilio  
Name of Owner  
Whose address is 5 Whippetree Lane Amherst MA 01002  
Street City or Town State Zip Code

By a deed duly recorded in the  
**Hampshire County Registry of Deeds:** Book 9702 Page 236  
or

**Hampshire Registry District of the Land Court**, Certificate No. \_\_\_\_\_,  
Book \_\_\_\_\_, Page \_\_\_\_\_  
The decision of said Board is on file, with the papers, in ZBA FY2014-00016  
In the office of the Town Clerk Sandra J. Burgess

Certified this \_\_\_\_\_ day of \_\_\_\_\_

**Board of Appeals:**

Tom Ehrgood (Board of Appeals) Chairman  
Keith Langshole (Board of Appeals) Clerk

at \_\_\_\_\_ o'clock and \_\_\_\_\_ minutes \_\_\_\_\_ m.  
Received and entered with the Register of Deeds in the County of Hampshire  
Book \_\_\_\_\_ Page \_\_\_\_\_

ATTEST \_\_\_\_\_

Register of Deeds  
Notice to be recorded by Land Owner

# Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/St/Zip</i>
16D-1	EAST HADLEY RD	ALLARD'S FARMS INC		P.O. BOX 259	SOUTH DEERFIELD, MA 01373-0259
16D-241	EAST HADLEY RD	FRETWELL, KATHARINE L		321 EAST HADLEY RD	AMHERST, MA 01002
19A-1-4	EAST HADLEY RD	PITTS, JAMES D III & PENNINGTON C		352 EAST HADLEY RD	AMHERST, MA 01002
16D-13	266 EAST HADLEY RD	YOSREX LIMITED PARTNERSHIP	C/O RONEX CORP	P.O. BOX 81335	WELLESLEY HILLS, MA 02481-0003
16D-10	286 EAST HADLEY RD	HART, CAROLYN M		46 HARVARD AVE	AMHERST, MA 01002
16D-236	289 EAST HADLEY RD	WATKINS, SANDRA IRENE	TUCKER, IRENE C	289 EAST HADLEY RD	AMHERST, MA 01002
16D-242	296 EAST HADLEY RD	CAMARA, MASSABORY, CAMARA, CHRISTINA		296 EAST HADLEY RD	AMHERST, MA 01002
16D-239	301 EAST HADLEY RD	SAUL, ROBERT		321 EAST HADLEY RD	AMHERST, MA 01002
16D-238	321 EAST HADLEY RD	SAUL, ROBERT & FRETWELL, KATHARINE L		321 EAST HADLEY RD	AMHERST, MA 01002
16D-243	336 EAST HADLEY RD	CHANG, CHING S		336 EAST HADLEY RD	AMHERST, MA 01002
16D-3	337 EAST HADLEY RD	FRETSAUL LIMITED PARTNERSHIP	C/O LIU, ZHENHUA & GUO, ZHUYAN	321 EAST HADLEY RD	AMHERST, MA 01002
16D-2	343 EAST HADLEY RD	KEYSER, PETER R		343 EAST HADLEY RD	AMHERST, MA 01002
16D-12	344 EAST HADLEY RD	ROBSON, PETER H D	ROBSON, ERIN KINSELLA	344 EAST HADLEY RD	AMHERST, MA 01002
19A-4	352 EAST HADLEY RD	PITTS, JAMES D III	C/O PITTS, PENNINGTON C & JAMES D III	352 EAST HADLEY RD	AMHERST, MA 01002

<i>Parcel_ID</i>	<i>Parcel_Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/Zip</i>
16D-237	2 WHIPPLETREE LN	SETTERFIELD, MARK & MACDONALD, JENNIFER		2 WHIPPLETREE LN	AMHERST, MA 01002
16D-244	5 WHIPPLETREE LN	DIVIRGLIO, BRUCE A & MARY E		5 WHIPPLETREE LN	AMHERST, MA 01002
16D-19	6 WHIPPLETREE LN	PASTORELLO, RICHARD R	PASTORELLO, ROBERTA A	6 WHIPPLETREE LN	AMHERST, MA 01002
16D-31	7 WHIPPLETREE LN	GRAHAM, DAVID M	C/O GANESAN, DEEPAK & SUBRAMANYAM, K	7 WHIPPLETREE LN	AMHERST, MA 01002
16D-20	8 WHIPPLETREE LN	SALICIONI, ANA MARIA & VISCONTI, PABLO E		8 WHIPPLETREE LN	AMHERST, MA 01002
16D-21	10 WHIPPLETREE LN	RAZMI, ARSLAN M & CHECA, SOFIA H		10 WHIPPLETREE LN	AMHERST, MA 01002
16D-32	2 WINTERGREEN CIR	SEIHOUN, FARHANG & FATEMAH	C/O TESAURO, JOHN ALBERT & MICHELE B	2 WINTERGREEN CIR	AMHERST, MA 01002
16D-246	3 WINTERGREEN CIR	MILLER, MARTIN C & BRENDA M		3 WINTERGREEN CIR	AMHERST, MA 01002
16D-33	4 WINTERGREEN CIR	MEDINA, ISMAEL	MEDINA, SAMUEL	4 WINTERGREEN CIR	AMHERST, MA 01002
16D-245	5 WINTERGREEN CIR	TANNE, STEPHEN L & SARA B	C/O RUTHERFORD, DAVID P & LISA H	5 WINTERGREEN CIR	AMHERST, MA 01002
16D-30	6 WINTERGREEN CIR	CHANG, CHING S	LU, FA-LAN	6 WINTERGREEN CIR	AMHERST, MA 01002